

At the appropriate place, insert the following:

SEC. ____ . PERMANENT PROHIBITION ON CONGRESSIONAL EARMARKS.

(a) **BILLS AND JOINT RESOLUTIONS.**—

(1) **POINT OF ORDER.**—It shall not be in order to—

(A) consider a bill or joint resolution reported by any committee that includes an earmark, limited tax benefit, or limited tariff benefit; or

(B) a Senate bill or joint resolution not reported by committee that includes an earmark, limited tax benefit, or limited tariff benefit.

(2) **RETURN TO THE CALENDAR.**—If a point of order is sustained under this subsection, the bill or joint resolution shall be returned to the calendar until compliance with this subsection has been achieved.

(b) **CONFERENCE REPORT.**—

(1) **POINT OF ORDER.**—It shall not be in order to vote on the adoption of a report of a committee of conference if the report includes an earmark, limited tax benefit, or limited tariff benefit.

(2) **RETURN TO THE CALENDAR.**—If a point of order is sustained under this subsection, the conference report shall be returned to the calendar.

(c) **FLOOR AMENDMENT.**—It shall not be in order to consider an amendment to a bill or joint resolution if the amendment contains an earmark, limited tax benefit, or limited tariff benefit.

(d) **AMENDMENT BETWEEN THE HOUSES.**—

(1) **IN GENERAL.**—It shall not be in order to consider an amendment between the Houses if that amendment includes an earmark, limited tax benefit, or limited tariff benefit.

(2) **RETURN TO THE CALENDAR.**—If a point of order is sustained under this subsection, the amendment between the Houses shall be returned to the calendar until compliance with this subsection has been achieved.

(e) **WAIVER.**—Any Senator may move to waive any or all points of order under this section by an affirmative vote of two-thirds of the Members, duly chosen and sworn.

(f) **DEFINITIONS.**—For the purpose of this section—

(1) the term “earmark” means a provision or report language included primarily at the request of a Senator or Member of the House of Representatives providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process;

(2) the term “limited tax benefit” means any revenue provision that—

(A) provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and

(B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; and

(3) the term “limited tariff benefit” means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

SA 1476. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 2038, to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. MEMBER CERTIFICATION.

Section 102(a) of the Ethics in Government Act of 1978 is amended by inserting at the end the following:

“(9)(A) A statement (as provided in subparagraph (B)) certifying that financial transactions included in the report filed pursuant to section 101 (d) and (e) were not made on the basis of non-public information.

“(B) The certification required by this paragraph is as follows: ‘I hereby certify that the financial transactions reflected in this disclosure form were not made on the basis of material, non-public information.’”.

NOTICE OF INTENT TO SUSPEND THE RULES

Mr. COBURN. Mr. President, I submit the following notice in writing: In accordance with rule V of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to offer an amendment to the Standing Rules of the Senate, by proposing Amendment No. 1473 to S. 2038.

PRIVILEGES OF THE FLOOR

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that Hala Furst, a Presidential Management Fellow on detail to the Homeland Security and Governmental Affairs Committee, be granted the privilege of the floor for the duration of the debate on S. 2038.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. TESTER. Mr. President, I ask unanimous consent that Val Molaison, a fellow in my office, be granted the privilege of the floor today.

The PRESIDING OFFICER. Without objection, it is so ordered.

BORDER TUNNEL PREVENTION ACT OF 2011

Mr. BROWN of Ohio. Madam President, I ask unanimous consent that the Senate proceed to Calendar No. 260, S. 1236.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1236) to reduce the trafficking of drugs and to prevent human smuggling across the Southwest Border by deterring the construction and use of border tunnels.

There being no objection, the Senate proceeded to consider the bill.

Mr. BROWN of Ohio. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1236) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1236

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Border Tunnel Prevention Act of 2011”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) As the international border between the United States and Mexico becomes more secure, trafficking and smuggling organizations intensify their efforts to enter the United States by increasing the number of tunnels and other subterranean passages between Mexico and the United States.

(2) Border tunnels are most often used to transport narcotics from Mexico to the United States, but can also be used to transport people and other contraband.

(3) Between May 1990 and May 2011, law enforcement authorities discovered 137 tunnels, 125 of which have been discovered since September 2001. While law enforcement authorities discovered only 2 tunnels in California between 1990 and 2001, there has been a dramatic increase in the number of border tunnels discovered in California since 2001.

(4) Section 551 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109-295) added a new section to title 18, United States Code (18 U.S.C. 555), which—

(A) criminalizes the construction or financing of an unauthorized tunnel or subterranean passage across an international border into the United States; and

(B) prohibits any person from recklessly permitting others to construct or use an unauthorized tunnel or subterranean passage on the person’s land.

(5) Any person convicted of using a tunnel or subterranean passage to smuggle aliens, weapons, drugs, terrorists, or illegal goods is subject to an enhanced sentence for the underlying offense. Additional sentence enhancements would further deter tunnel activities and increase prosecutorial options.

SEC. 3. DEFINITIONS.

In this Act:

(1) **NATIONAL SECURITY ZONE.**—The term “national security zone” means any Southwest Border land designated by the Secretary as being at a high risk for border tunnel activity, as authorized under section 8(b).

(2) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security.

(3) **SOUTHWEST BORDER LAND.**—The term “Southwest Border land” means all parcels of real property in the United States that—

(A) are located within 1 mile of the international border between the United States and Mexico; and

(B) are not owned by a Federal, State, tribal, or local government entity.

SEC. 4. ATTEMPT OR CONSPIRACY TO USE, CONSTRUCT, OR FINANCE A BORDER TUNNEL.

Section 555 of title 18, United States Code, is amended by adding at the end the following:

“(d) Any person who attempts or conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”.

SEC. 5. AUTHORIZATION FOR INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS.

Section 2516(1)(c) of title 18, United States Code, is amended by inserting “, section 555 (relating to construction or use of international border tunnels)” before the semicolon at the end.

SEC. 6. FORFEITURE.

(a) **CRIMINAL FORFEITURE.**—Section 982(a)(2)(B) of title 18, United States Code, is amended by inserting “555,” after “545.”.

(b) **CIVIL ASSET FORFEITURE.**—Any merchandise introduced into the United States